

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
)
v.) CR. NO. 04-10390-WGY
)
MICHAEL AMBERS)

**OPPOSITION TO DEFENDANT'S MOTION
TO SUPPRESS**

The United States opposes the Motion To Suppress Evidence of defendant Michael Ambers ("Ambers"). In support of its opposition, the United States says the following:

1. The only issue raised by Ambers' motion (and the only issue apparently in dispute) is whether a traffic violation giving rise to the traffic stop by New Bedford Police in fact occurred. See Ambers' Motion at pp. 2-3 ("In this case there was no probable cause to stop the vehicle for a traffic violation because a traffic violation did not occur.").

2. The relevant facts are set forth in detail in the "Narrative" portions of the two New Bedford Police Department Reports written at the time, which are attached, and incorporated herein, as Exhibit A. (The "Narrative" portions of the reports are at pages 5-7, and 9.) As described in Exhibit A, on July 26, 2004, at approximately 1:00 a.m., New Bedford Police Officer Tyrone Jones observed a Dodge Neon automobile abruptly pull out of a parking space near the intersection of North Front Street

and Bullard Street in New Bedford without using a turn signal. The Dodge Neon automobile then drove through a stop sign at the intersection of Bullard Street and Belleville Avenue without stopping. After going through the stop sign, the automobile turned left onto Belleville Avenue, again without using a turn signal. (See Exhibit A at p. 5.) Officer Jones, following in his police automobile, activated his lights and siren and pulled over the Dodge Neon, leading, shortly thereafter, to the recovery from the defendant/passenger of the firearm and ammunition which are the subject of the Indictment, and the post-arrest statements of the defendant (that he had purchased the gun). Id. at pp. 5-7. Erin Andrews, the driver of the Dodge Neon, was issued a Massachusetts Motor Vehicle Uniform Citation for "Failure To Use Directional." A copy of the citation is attached, and incorporated herein, as Exhibit B.

3. As noted by Ambers (see his motion at page 2), police may lawfully stop a car that commits a traffic violation. Pennsylvania v. Mimms, 436 U.S. 106, 109 (1977). Consequently, the above-described traffic violations committed by Erin Andrews, the driver of the Dodge Neon, provided justification to New Bedford Police Officer Tyrone Jones to pull over the Dodge Neon, resulting in the subsequent recovery of a firearm and ammunition

from defendant Ambers who was a passenger in the car.¹ Because there was legal justification for the traffic stop, Ambers' motion should be denied.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/CHRISTOPHER F. BATOR
Assistant U.S. Attorney

Date: October 6, 2005

CERTIFICATE OF SERVICE

I, CHRISTOPHER F. BATOR, certify that I have served a copy of the above upon Frank D. Camera, Esq., 56 N. Main Street, Fall River, MA 02720 by first class mail.

/s/CHRISTOPHER F. BATOR
Assistant U.S. Attorney

Date: October 6, 2005

¹ As noted above, Ambers' motion only challenges the traffic stop. He does not directly challenge any actions by the police that occurred after the stop, including the ordering of Ambers to get out of the car, the pat frisk of Ambers, the removal of the gun from Ambers' pocket, and Ambers' post-arrest interview. He argues, instead, that the gun, ammunition and his post-arrest statements should all be suppressed because they derived from the unlawful traffic stop.

EXHIBIT A

NEW BEDFORD POLICE DEPARTMENT 2004-13950

871 Rockdale Avenue, New Bedford, MA 02740
UCR OFFENSE REPORT

Report Title: WEAPON OFFENSES Abuse: N Hate Crime: N
 Incident Occurred From: 07/26/2004 01:00 To:
 Call Info - Received: 07/26/2004 00:40 Arrived: 00:40 Completed: 01:24
 Incident Address: COFFIN AVE/BELLEVILLE AVE Apt#:

SUMMARY OF OFFENSES

Statute: 265.18B.626a UNLAWFUL POSS FIREARM COMMISSION OF FELONY
 Statute: 94C.34.823 UNLAWFUL POSSESSION CLASS B SUBSTANCE SUBS OFF

BUSINESS

TOA: VICTIM Vic Type: SOCIETY/PUBLIC Vic#: 01
 Name: CRIMES AGAINST SOCIETY Type: SOCIETY
 Address: NIBRS VICTIM - SOCIETY Apt/Unit: City: NEW BEDFORD St: MA
 Zip: Area Phone:
 Synopsis:

PERSONS

 Person Type: ARRESTED OR SUMMONED - ARREST APPLICATION MNI: 224497 Seq#: 01
 Name: AMBERS, MICHAEL Race: BLACK Sex: MALE DOB: 08/25/1981
 Address: 11 HAMILTON ST Apt/Unit: Age at Time of Report: 22
 City: TAUNTON SSN: 020-62-4400
 State: MASSACHUSETTS Zip: 02780 Home Phone: 508-880-4766
 Employer: Work Phone:
 Occupation: PHOTOGRAPHER
 Driver's License#: State: MA Status:
 Other ID#: State: Type:
 Hgt: 5'11" Wgt: 185 lbs Eye Color: BROWN Build: MEDIUM Skin: DARK
 Hair: BLACK Length: SHORT Style: WAVY
 Marks/Scars/Tattoos Type: Location:
 Side: Desc:
 AKA:
 Clothing:
 Words:
 Actions:
 Short Synopsis:
 Statement:

 Person Type: ARRESTED OR SUMMONED - ARREST APPLICATION MNI: 186499 Seq#: 02

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Name: ANDREWS, ERIN M	Race: WHITE	Sex: FEMALE DOB: 10/06/1982
Address: 71 FRUIT ST	Apt/Unit:	Age at Time of Report: 21
City: NEW BEDFORD		SSN: 033-62-4716
State: MASSACHUSETTS	Zip: 02571	Home Phone: 508-990-1826
Employer:		Work Phone:
Occupation: SECRETARY ASSISTANT		
Driver's License#: S25759380	State: MA	Status: ACTIVE
Other ID#:	State:	Type:
Hgt: 5'5" Wgt: 170 lbs Eye Color: BLUE	Build: HEAVY	Skin: LIGHT
Hair: BROWN Length: LONG	Style: STRAIGHT	
Marks/Scars/Tattoos Type:		Location:
Side: Desc:		
AKA:		
Clothing:		
Words:		
Actions:		
Short Synopsis:		
Statement:		

POLICE OFFICER WITNESSES

Name: CHABEREK, STANLEY	Rank: OFF	Agency: NEW BEDFORD POLICE D
Unit Assignment: PATROL 1C SHIFT	Empl#: 3863	Tel#: 508-991-6300
Involvement in the Report:		
Officer's Statement:		
Name: NETINHO, RICHARD A	Rank: SGT	Agency: NEW BEDFORD POLICE D
Unit Assignment: DETECTIVES	Empl#: 3694	Tel#: 508-991-6300
Involvement in the Report:		
Officer's Statement:		

ARREST OR SUMMONS INFORMATION

Person Type: ARRESTED OR SUMMONSED Name: AMBERS, MICHAEL Seq#:
 Arrest Date: 07/26/04 Time: 01:00 MNI#: 224497 OBTN#: TNEB000054445
 Arrest Type: ARRESTED ON VIEW Location: COFFIN AVE/BELLEVILLE AVE
 DOB: 08/25/1981 Age: 22

Arrested by: 3744 JONES, TYRONE C.

Charges:

Chap: 94C Sec: 32J	Charge: POSS INTENT TO DISTRIBUTE CLASS D S	Counts: 01
Chap: 94C Sec: 32C	Charge: POSSESSION CLASS D SUBSTANCE INTENT	Counts: 01
Chap: 94C Sec: 40	Charge: CONSPIRACY TO VIOLATE CONTROLLED SU	Counts: 01
Chap: 94C Sec: 34	Charge: UNLAWFUL POSSESSION CLASS D SUBSTAN	Counts: 01
Chap: 140 Sec: 131C	Charge: CARRYING FIREARMS IN VEHICLE VIOLAT	Counts: 01

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Chap:269	Sec:10H	Charge: UNLAWFUL POSSESSION AMMUNITION	Counts: 01
Chap:94C	Sec:34	Charge: UNLAWFUL POSSESSION CLASS B SUBSTAN	Counts: 01
Chap:94C	Sec:34	Charge: UNLAWFUL POSSESSION CLASS B SUBSTAN	Counts: 01
Chap:265	Sec:18B	Charge: UNLAWFUL POSS FIREARM COMMISSION OF	Counts: 01
Chap:269	Sec:10	Charge: CARRY FIREARM WITHOUT LICENSE SUBS	Counts: 01

Prisoner's Property:

BELT
NECKLACE W/CHARM
2 BRACELETS
1 RING
CIGGARETTS
4 LIGHTERS

Person Type: ARRESTED OR SUMMONSED Name: ANDREWS, ERIN M Seq#:
Arrest Date: 07/26/04 Time: 01:00 MNI#: 186499 OBTN#: TNEB000054441
Arrest Type: ARRESTED ON VIEW Location: COFFIN AVE/BELLEVILLE AVE
DOB: 10/06/1982 Age: 21

Arrested by: 3744 JONES, TYRONE C.

Charges:

Chap:94C	Sec:32J	Charge: POSS INTENT TO DISTRIBUTE CLASS D S	Counts: 01
Chap:94C	Sec:32C	Charge: POSSESSION CLASS D SUBSTANCE INTENT	Counts: 01
Chap:94C	Sec:40	Charge: CONSPIRACY TO VIOLATE CONTROLLED SU	Counts: 01
Chap:90	Sec:14B	Charge: FAIL SIGNAL BEFORE STOP TURN	Counts: 01

Prisoner's Property:

POCKET BOOK
WALLET
PAPERS
4 RINGS
6 EARRINGS
1 BRACELET
4 NECKLACES

UNIFORM CITATION REPORT
CITATION NUMBER: 0997486

DATE OCCURRED: 07/26/2004 DAY: MONDAY TIME: 01:00 DATE ISSUED: 07/26/04
LOCATION OCCURRED: BULLARD ST/N FRONT ST
VIOLATOR: ANDREWS, ERIN M MNI#: 186499 SEX:F RACE:B DOB: 10/06/1982
D/L #: S25759380 STATE: MA CLASS: D EXP: SSN: 033-62-4716

VEHICLE INFORMATION

YEAR: 2003	MAKE: DODGE	MODEL: NEON	STYLE: 2 DOOR
TAG #: 19SF14	TAG STATE: MA	TAG EXPIRES: 2003	VEHICLE SEARCHED?: Y
VIN#:	ISSUED BY OFFICER: JONES, TYRONE C.		

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CITATION CHARGES

Chap:90 Sec:14B Charge: FAIL SIGNAL BEFORE STOP TURN

NO TOWS ASSOCIATED TO THIS REPORT

PROPERTY

Type: FIREARMS Property Status: EVIDENCE (NOT UCR)
 Qty: Brand/Make: SMITH AND WESSON Model: 60 CHIEFS SPECI
 Article Value: 000000500 Article Number: 00130791
 Serial #: R181463 Value: \$000000500 Rec: \$
 Description: SMITH & WESSON 38 CAL. MODEL 60
 Owner:

Type: FIREARMS Property Status: EVIDENCE (NOT UCR)
 Qty: Brand/Make: AMMUNITION Model: 38 CAL
 Article Value: 000000020 Article Number: 00130792
 Serial #: Value: \$000000020 Rec: \$
 Description:
 Owner:

Status: SEIZED Type: MARIJUANA -BAGGED MARIJUANA
 Qty: 00000005.001 GRAM(S) Desc: 5 PLASTIC BAGS MARIJUANA
 OCIB Case#: Prop.Tag#: 00130794 Recov.OFC:

Status: SEIZED Type: OTHER NARCOTICS -OXYCONTIN
 Qty: 00000004.000 DOSAGE UNIT/ITEMS Desc: 4 OXYCOTIN PILLS
 OCIB Case#: Prop.Tag#: 00130795 Recov.OFC:

Type: MONEY Property Status: EVIDENCE (NOT UCR)
 Qty: Brand/Make: U.S. CURRENCY Model:
 Article Value: Article Number: 00130797
 Serial #:
 Description:
 Owner:

Total Property Value Stolen: \$ 520 Recovered: \$ 0

PHOTOS AND FINGERPRINTS

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Processed: NO By:

Photos: NO Prints:

NARRATIVE

Sir on the above date and time I was assigned to uniform patrol unit 36 on the 12-8 shift in a marked police cruiser. At approx. 0100hrs. I was traveling East on Bullard St. As I approached N front St I observed a Dodge neon parked on Bullard St the South curb at N Front. There was a male leaning into the passengers side window of the auto. The male stood up, looked at the cruiser and immediately walked South on N Front St. I continued driving East. The Dodge abruptly pulled out from the parking space to travel East on Bullard St. The operator failed to use the turn signal. The auto sped off Easterly. The auto approached the intersection of Bullard St/Belleville Ave. There is a stop sign at this location. The auto rolled through the stop sign and turned left (North) onto Belleville Ave. The operator again failed to use the turn signal. I activated the cruiser blue lights and siren to signal the auto to stop. The auto stopped a short distance away at the corner of Belleville Ave/Coffin Ave. The operator did have plenty of room and time to stop sooner but continued driving at a slow rate of speed until coming to a rest at the mentioned intersection.

I now informed communications of my location and that I was out with an auto with two occupants. During this time I observed the passenger seated in the front seat begin to make movements, at one point the passenger ducked his head forward toward the dash board in front of him. For a brief moment he was now out of my sight. I now noticed another marked cruiser pull in behind me. I exited my cruiser, I looked back and noticed Ofc Stan Chaberek exiting his cruiser. As I now approached the Neon I noticed the passenger still moving about. The passenger now placed his left hand on the dash board, lifted himself off the seat and it appeared that he put his right hand behind him as to possibly hide or retrieve something. The male then sat back down on the seat. As a note this traffic stop occurred in close proximity to a lit street light. While walking to the Neon I informed Ofc. Chaberek of what I observed and told him I was going to immediately take the passenger out of the car. I got to the passenger side of the auto and asked the male to exit the auto. He exited the auto while Ofc. Chaberek was now standing to my left. Ofc. Chaberek immediately asked the male if he was carrying a weapon. Please refer to Ofc. Chaberek's supplement.

Once the passenger was placed in handcuffs. I now ordered the driver to shut off the car, which at first she refused and put her right hand on the shift as possibly put the auto in drive. I now approached the driver's side and again ordered her to shut the car off and place her hands on the steering wheel. After this order was given three times. The female finally complied. I removed the operator from the auto, placed hand cuffs on her and informed her she was not under arrest at this time. She was being placed in cuffs for everyone's safety and that we had found a firearm on the passenger. I asked her if she had any weapons and she replied no. A now conducted a pat frisk and found no further contraband. The driver was now placed into a cruiser so that I could help Ofc. Chaberek conduct a better search of the passenger. During this search the following was found. Ofc. Chaberek found 3 plastic corner baggies of a green leafy substance believed to be marijuana in the males right front pants pocket. Ofc. Chaberek also found four small pills wrapped in plastic in the

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right rear pants pocket. These pills were later identified as Oxycontin. Ofc. Chaberek found amounts of US Currency during his search. I found one larger plastic bag containing a green leafy substance believed to be marijuana in the left front cargo pocket of his shorts, and an amount of US Currency on his person. I now read the male Michael Ambers his rights under Miranda. He was then placed into my cruiser.

A search of the auto was now conducted by myself and Ofc. Chaberek. Ofc. Chaberek located a women's pocket book located between the driver and passenger's seat. The front zipper part of the pocket book was unzipped already and in this compartment a small corner bag of suspected marijuana was found.

The

firearm which was loaded with five rounds was now unloaded and given to me at the scene by Ofc Chaberek. The suspected marijuana that he found was given to me

along with the US currency. I now asked the female Erin Andrews if the pocket book found in the auto was hers? She stated that it is. I asked if the contents inside were hers? She replied yes. I showed her the plastic bag of suspected marijuana, she stated that that was also hers. She then asked where her cell phone was? I held up a black and white i730 Nextel Phone and asked if it belonged to her? She stated yes. Moments later the Nextel phone rang I answered the phone and a female voice asked for Erin. I stated she was busy. The female then asked me are you making her deliveries? I stated yes I could take care of her. The female voice then stated can you do two forties for seventy dollars? This quantity and monetary value is consistent with street talk for two forty dollar bags of marijuana, and she was looking for a deal spending only seventy dollars. I told her to meet me at the Seven Eleven on Acushnet Ave at Coffin Ave. She agreed and stated she would be driving a black older style Chevy Blazer. I now left he scene and drove West on Coffin Ave. as I approached Coffin Ave/Acushnet Ave I could see a female pumping gas into an older model Chevy Blazer. This was the only auto in the lot and at this time it was approx. 0130hrs.

Based on my experience it appears that Erin is involved selling drugs as a delivery service to her customers. Based on this information I charged Erin with Possession with intent to distribute Class D substance, therefore confiscating her \$107 dollars. This traffic stop did occur directly in front of the playground/skate park located on the corner of Belleville Ave/Coffin Ave. Based on the amount of suspected marijuana 1.02 ounces and the packaging of the suspected drugs Michael was charged accordingly and his \$862 was confiscated. The money found on Michael is as follows. Two different stacks folded together consisting of one pile 19-20 dollar bills, 5-10 dollar bills, 4-5 dollar bills 2-50 dollar bills and 12-1 dollar bills. The second stack was 11-20 dollar bills, 2-10 dollar bills 2-5 dollar bills, 1-50 dollar bill Which is typical of a suspect making street sales. The dealer will make a sale and quickly fold the money and put it into his pocket and leave the area. This also helps them to keep track of the amount of sales made rather then putting all the money together.

Erin and Michael were brought into HQ for booking. Both Def's were read there rights under Miranda and allowed to use the phone. Erin was issued a citation for the motor vehicle violation. The suspected marijuana that I found was initialed by me and Ofc. Chaberek initialed his. The suspected drugs were then placed into evidence envelopes along with the confiscated currency. The

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envelopes were then given to Capt. Soars to be placed into the evidence locker. The firearm and ammo was also placed into an evidence envelope and given to Capt Soars to be placed into the evidence locker. The serial number on the firearm was run through our record room by Ofc. Barnes. However the query came back no matching record found. Michael stated to me that had purchased the firearm from a friend on the street for \$500. No other information has been gathered as of now on the firearm. Erin's auto was parked legally and left at the scene.

Respectfully submitted

Ofc. Tyrone C. Jones
#3744

ADMINISTRATION

Electronic Signature by Logon: JONES, TYRONE C
Report Entered by Officer: JONES, TYRONE C.

Unit OFC1: JONES, TYRONE C. #: 3744 Unit: 36A Date: 07/26/04
Unit OFC2: #: Unit: 36A
Routing: Date: Div:
Clearance : Clearance Date:
Supervisor : SOARES, ANTONIO P #: 3352
Approved By: #:
Attachments:
Digital Photos Attached: N

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NEW BEDFORD POLICE DEPARTMENT 2004-13950/1
871 Rockdale Avenue, New Bedford, MA 02740
UCR SUPPLEMENT REPORT

FOLLOW-UP: WEAPON OFFENSES

OCCURRED: 07/26/2004 01:00

TO:

RECEIVED: 07/26/2004 00:40

ARRIVED: 00:40

COMPLETED: 01:24

FOLLOW-UP ADDRESS:

APT#

CITY.:

STATE:

ZIP: 2400

CENSUS TRACT:

ZONE:

AREA:

NO OFFENSES ASSOCIATED TO THIS REPORT

NO BUSINESS OR ORGANIZATION ASSOCIATED TO THIS REPORT

NO OTHER POLICE OFFICER WITNESSES ASSOCIATED TO THIS REPORT

NO ARRESTS ASSOCIATED TO THIS REPORT

NO CITATIONS ASSOCIATED TO THIS REPORT

NO TOWS ASSOCIATED TO THIS REPORT

NO PROPERTY ASSOCIATED TO THIS REPORT

Total Property Value Stolen: \$

Recovered: \$

0

PHOTOS AND FINGERPRINTS

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Processed: NO By:

Photos: NO Prints:

NARRATIVE

On Monday, July 26, 2004, while assigned to unit 33A, I assisted unit 36A on a traffic stop at Coffin Ave. and Bellville Ave.

Officer Jones informed the undersigned that the front seat passenger was making furtive movements. Officer Jones then informed me he would request the passenger to step out of the vehicle for Officer safety. Officer Jones opened the vehicles door while I stood to Officer Jones left. I observed as the male stepped out of the vehicle, his shirt was partially above his belt line and

I saw a gun holster tucked in his front waist line. The male then fixed his shirt in an attempt to conceal this. I informed Officer Jones of this and then ordered the male to turn around and face Officer Jones. I seen a large bulge in his right front pants pocket and I then pat the outside of the pocket at which time I felt what I believed to be a handgun. I replied GUN and reached into the males pants pocket and removed the firearm. Officer Jones and I then ordered the male to the ground and he complied. The male was then handcuffed and further searched.

Respectfully submitted,

ADMINISTRATION

Electronic Signature by Logon: JONES, TYRONE C

Report Entered by Officer: CHABEREK, STANLEY

Unit OFC1: JONES, TYRONE C. #: 3744 Unit: 36A Date: 07/26/04

Unit OFC2: #: Unit: 36A

Routing: Date: Div:

Clearance : Clearance Date:

Supervisor : SOARES, ANTONIO P #: 3352

Approved By: #:

Attachments:

Digital Photos Attached: N

EXHIBIT B

AGENCY COPY

MASSACHUSETTS UNIFORM CITATION

M0997486